

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

REGINALD MANUEL §
VS. § CIVIL ACTION NO. 1:06cv539
DIRECTOR, TDCJ-CID §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Reginald Manuel, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court previously referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the petition. The magistrate judge recommends the petition be dismissed as barred by the applicable statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation.

Petitioner asserts four grounds for review. He states that, with respect to his claim that as a result of newly discovered evidence he is actually innocent of the offense charged, the magistrate judge erred in determining that the applicable period of limitations began to run on the date on which his conviction

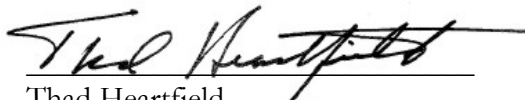
became final. He states the period of limitations applicable to this ground for review did not begin to run until the date on which he received the affidavit which forms the basis of his actual innocence.

The court agrees with the magistrate judge's conclusion as to when the period of limitations began to run. Moreover, even if it could be concluded petitioner's actual innocence claim was timely filed, the claim would not entitle petitioner to relief in this proceeding. "Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." *Herrera v. Collins*, 506 U.S. 390, 390-91 (1993).

O R D E R

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing the petition.

SIGNED this the 20 day of February, 2007.



Thad Heartfield
United States District Judge